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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

J. HOWARD ARNOLD — Petitioner

vs.

FRANCES K. ARNOLD — Respondent

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

To the Honorable Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States of America:

The petition of J. Howard Arnold for a Writ of Certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit made and entered by said court after decision in the United States District Court for the Northern District of California, respectfully shows to this Honorable Court:

I

OPINIONS OF THE COURTS BELOW. This

is a proceeding to secure review of a District Court judgment order, affirmed on appeal, denying a debtor's Motion to Remove Cloud on Title to real property in his debtor's estate, and thus remove a bar to confirmation of an Arrangement with Creditors under Chapter XI of the Bankruptcy Act. The Referee denied debtor's motion and granted his own motion to dismiss the entire Arrangement proceeding. His decision on both motions, under the title ORDER DISMISSING PROCEEDINGS, is appended hereto. It was filed Sept. 12, 1966, and on Oct. 6, 1966, a Motion to Alter and Amend was denied without opinion (except as orally stated by the Referee and given in the Reporter's Transcript of the hearing thereon, Record p. 76).

On review, the District Judge "denied" debtor's petition for review, without opinion. His order of Nov. 16, 1966 (Record, p. 58) is appended hereto. Debtor's motion to alter and amend the order of the District Judge was denied in the appended order dated Feb. 9, 1967 (Record, p. 69), again without opinion.

On appeal, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court, virtually without opinion, but referring to two opinions from prior appeals in this case; this decision of August 5,

1968, is appended. Debtor's petition for rehearing was denied Sept. 9, 1968, also without opinion; a copy of the Petition for Rehearing is included with the Record herein.

II

JURISDICTIONAL STATEMENT. The statutory provision believed to sustain the jurisdiction of this Court is Paragraph (1) of Section 1254, Title 28, United States Code. The judgment to be reviewed was dated and entered August 5, 1968. The order denying rehearing was dated and entered September 9, 1968. No extension of time within which to petition for certiorari has been sought or granted.

III

QUESTIONS PRESENTED FOR REVIEW.

(1) Abstention Doctrine. May a District Court, abstaining from exercise of the paramount and exclusive jurisdiction over a debtor's estate, conferred by the Bankruptcy Act, refuse on evident grounds of comity toward a State court, to make an independent de novo determination of ownership of property claimed by a debtor as part of his estate, when such refusal is not sanctioned by the abstention doctrine enunciated by this Court in prior cases?

(2) Jurisdiction in rem. On filing of a divorce action by a debtor's wife, does the State divorce court take a jurisdiction in rem over the parties' community property that cannot be displaced by the normally paramount and exclusive jurisdiction in rem taken by a bankruptcy court on filing of an original petition by the husband under Chapter XI? Does an Interlocutory Judgment of Divorce, purporting to 'award' community real property to the debtor's wife -- free and clear of creditors' claims -- finally bar involvement of that property in a Chapter XI Arrangement, where the divorce action was filed by the wife prior to the husband's original petition under the Bankruptcy Act, and the divorce judgment rendered a week prior to confirmation of the Arrangement?

(3) Wife's Consent to Arrangement. Is a Chapter XI Arrangement such an encumbrance of community property by a husband-debtor that, under Section 172(a), Civil Code of California, its validity is contingent upon his wife's joining with him (thus subordinating Federal law to State law), since his original petition was voluntary?

(4) Setting Aside of Arrangements. Does the setting-aside of a confirmed Arrangement with Creditors under Section 386(2), Bank-

runtcy Act, for the requisite 'fraud in procurement' (i.e., mere remediable technical error, not morally turpitudinous substantive fraud) bar future confirmation of any 'essentially similar' plan, despite the plain intent of the law that the proceeding go forward to a second confirmation after correction of the procedural error?

(5) Dismissal of Proceeding. May a referee dismiss a proceeding without notice to creditors, and on his own motion (void when made, for lack of jurisdiction pending appeal, and therefore still void after continuances) ? Is dismissal proper under Chapter XI, which in a proper case assures the debtor's emergence with all his property still in his possession and with his creditors' claims satisfied, when as a direct result of the referee's abstention the debtor is still seeking to establish his title to said property and consummate the proceeding?

(6) Duty of District Judge on Review. On a petition for review of a referee's order, involving only questions of law which carry no presumption of correctness under General Order 47, may the District Judge affirm the order without opinion or other indication he has given the matter the independent consideration required under G.O. 47 ?

IV

STATUTES INVOLVED.

Section 172(a), Civil Code of California.
The husband has the management and control of the community real property, but the wife, either personally or by duly authorized agent, must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

Section 2, Bankruptcy Act (11 U.S. Code, Sec. 11)
(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to — (1) . . . . (2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; . . . (3) . . . (4) . . . (5) . . .(6) . . . (7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and

determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate whenever, under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; and where in a controversy arising in a proceeding under this title an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion, or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction; . . .

Section 4, Bankruptcy Act (11 U.S. Code 22)
(a) Any person . . . shall be entitled to the benefits of this Act as a voluntary bankrupt.
(b) Any natural person, except a wage earner or farmer, . . . owing debts to the amount of $1000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of the Act.

Section 70, Bankruptcy Act (11 U.S. Code 110) Title to Property. a. The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of filing of the petition initiating the proceeding under this Act . . . . to . . (5) property, including rights of action which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him . . .(6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; . . . . .

Section 302, Bankruptcy Act (11 U.S. Code 702) The provisions of chapters I to VII, inclusive, of this Act shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such applications, provisions relating to "bankrupts" shall be deemed to relate also to "debtors" and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter . . . . .

Section 311, Bankruptcy Act (11 U.S. Code 702)

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

Section 376, Bankruptcy Act (11 U.S. Code 776 If . . . . confirmation of the arrangement is refused, the court shall — (1) . . .(2) where the petition was filed under section 322 of this Act, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt . . or dismissing the proceeding . . .whichever in the opinion of the court may be in the interest of the creditors. . . .

Section 386, Bankruptcy Act (11 U.S. Code 786) If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement — (1) . . . (2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine application for leave

to propose, within such times as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; (3) . . . . .

General Order 47. Reports of Referees and Special Masters. Unless otherwise directed in the order of reference the report of a referee or of a special master shall set forth his findings of fact and conclusions of law, and the judge shall accept his findings of fact unless clearly erroneous. The judge after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

V

STATEMENT OF THE CASE. This is the third of three appeals taken in a proceeding for an Arrangement with Creditors begun over six years ago; the first two reviews did not reach this Court, but yielded a complex (and erroneous) 'law of the case' upon which the decision at bar rests. Therefore, all three appeals will be outlined briefly here.

Petitioner filed on June 19, 1962, an original petition for an Arrangement with Creditors under Charter XI, Bankruptcy Act, and there-

after acted as Debtor in Possession. The Referee confirmed on Oct. 30, 1962, an Arrangement encumbering community real property of Petitioner and Respondent for the benefit of creditors (his mother and brother) by a Deed of Trust in the amount of $14,750.

Petitioner's wife, Frances K. Arnold, the Respondent herein, brought suit for divorce on Nov. 29, 1961, and on Oct. 22, 1962, obtained an Interlocutory Judgment of Divorce purporting to 'award' her the community real property in the debtor's estate of Petitioner, with immediate and exclusive possession thereof.

At Respondent's request, invoking Sec. 380(2) of the Bankruptcy Act and using the language "..fraud was practiced by the debtor.. in procuring the confirmation of the Arrangement ...by concealing from this Court all facts of his marriage and divorce..." the Referee on Feb. 28, 1963 set aside the confirmation in the belief that the State court 'award' (i.e., an immediate valid transfer of title) barred the involvement of said property in the Arrangement. On review, the District Judge affirmed the Referee's order without amplification.

Petitioner appealed, contending that the State court divorce 'award' was not a transfer of title but only an immaterial and irrelevant in

personam declaratory judgment, that his non-disclosure of it was not 'fraud in procurement' (i.e., remediable technical error to be cured by re-starting the procedure under Sec. 386(2)), and that a State court could not deal with a debtor's estate in defiance of the paramount and exclusive jurisdiction in rem taken by the District Court on filing of his original petition under Chapter XI, Bankruptcy Act.

The United States Court of Appeals for the Ninth Circuit affirmed the District Court judgment, but rejected the Referee's findings and improperly made new findings, resting its decision on the wholly erroneous concept that State law required a wife's consent to a debtor's voluntary petition under Chapter XI, and that State law made the wife a half-owner of community property. The Court refused to consider the basic issue of State-Federal conflict of jurisdiction and the validity of the divorce judgment as a transfer of title to property in District Court custody, which Respondent's counsel fraudulently argued were not at issue.

Arnold v. Arnold (1964) 326 Fed. 2nd 960 (CA,9)

Three weeks later, the State Court of Appeal (unpublished decision, Feb. 14, 1964) ruled that

" . . . the trial court is directed to modify the interlocutory decree of divorce to provide

that the provisions disposing of the parties' community property shall be effective upon the entry of the final decree of divorce . ."

thus effectively nullifying the 'award' held by the Referee to be an immediate transfer of title barring confirmation.

Since the existence of the divorce judgment had now been disclosed in the Federal court, and shown on State appeal to be merely a tentative, provisional declaratory judgment of no possible material importance to the Arrangement proceeding, no essential modification was necessary to cure the non-existent 'fraud in procurement' under Sec. 386(2), and none was permissible for other purposes. (In fact, the Referee's use of Sec. 386(2) was procedural error: he should have denied Respondent's petition, and relegated her to a quiet-title suit.) The debtor proposed an Amended Plan of Arrangement on June 29, 1964, again involving his community real property.

The Referee denied confirmation on Nov. 10, 1964, holding that it was barred by (1) the divorce judgment, which he stated had been affirmed on appeal -- excepting, as he failed to realize, the property-disposal provisions! -- and (2) the Court of Appeals decision that the wife's consent was necessary. Fraud of

any type, including the misnamed 'fraud in procurement', was not mentioned in the Referee's order.

Contending that his wife's consent was unnecessary and that the State court could not legally control his debtor's estate (from which he had been evicted on March 20, 1963, and jailed for 25 days on a contempt of court charge -- after the Referee and District Judge Weigel had denied a stay of the eviction order, and District Judge Sweigert had denied a writ of habeas corpus!), Petitioner appealed for the second time. (On review of the Referee's order, District Judge Zirpoli affirmed, pointing to the law of the case established by the first appeal and refusing to follow stare decisis doctrine.)

The United States Court of Appeals for the Ninth Circuit affirmed the District Court denial of confirmation, again refused to decide the basic issue of jurisdictional conflict and validity of the divorce judgment, again stated incorrectly that the Referee had made a finding that the 'arrangement was tainted by fraud', and holding erroneously that the merits of the Arrangement had been finally adjudicated in the first appeal. (Had the Referee found inherent fraud in the plan, he would not have invoked Sec. 386(2), but would have dismissed the entire

proceeding forthwith. His use of Sec. 386(2) must be taken as a finding of soundness in the plan but error in the procedure.) Confirmation is barred, the Referee has consistently held, only by the contentions that the debtor's wife now owns the property and does not consent to the plan. Both bars are extraneous to the Arrangement, and frivolous. The decision in the second appeal, Arnold v. Arnold (1966) 356 Fed. 2nd 873 (CA, 9) on Feb. 28, 1966,(rehearing denied April 5) not only failed to settled the questions raised by the Referee, but added new ones!

In a third attempt to untangle the law of the case, Petitioner on July 12, 1966, moved to remove the cloud (created by the divorce judgment) on his title to the community real property, and thus secure from the Referee himself a decision on the ownership of the property, uncomplicated by questions arising from any plan of arrangement. For 3 years, the Referee had insisted that a title determination must come from higher judicial officers in the Federal court system, not from him.

Meanwhile, on March 9, 1966, while the second appeal was still pending and District Court jurisdiction therefore wanting, the Referee moved to dismiss the entire proceeding. After objections by Petitioner (Record, p. 4), the Ref-

eree continued his (void) motion to Sept. 12, 1966, and on that day made and entered an ORDER DISMISSING PROCEEDINGS, which granted his own motion to dismiss and denied the debtor's motion to remove cloud on title. Petitioner's motion to alter and amend was then heard on Oct. 6, 1966.

The Reporter's Transcript of this hearing (included in the Clerk's Transcript, Record pp. 76-82) shows clearly that the Referee refused to decide the question of title, abstaining without proper cause from the exercise of his exclusive jurisdiction over debtor's property.

"I do not think that it is within the power of the Referee in Bankruptcy to pass judgment on what the Superior Court did and any Appellate State Court did. I cannot reverse them."
-- Record, p. 79, line 18

"Well, I am not ruling on the Cloud on the Title. What I am saying is the State Court awarded the real property to your wife."
-- Record, p. 80, line 13

"So, if some other Court has made an award of the real property to Frances Arnold, I do not think I have the power to reverse the State Court."
-- Record, p. 80, line 4

" That would be up to the District Court on the Review to decide whether or not the property was actually in your possession and in the possession of the Federal Court, and the Superior Court exceeded its jurisdiction in awarding the property to Frances Arnold."
--Record, p. 80, line 24

These statements by the Referee clearly show his misconception of his duty and power to determine the title by applying State and Federal law, not by accepting void decisions of a State court without full judicial scrutiny. His Order Dismissing Proceedings (Record, p. 17) also shows clearly that he was accepting the divorce judgment in comity, and not validating it de novo by exercising his jurisdiction to declare it void or valid under Federal law. (This is not such a case as to permit abstention, or discretionary allowance of title determination in a State court, or retention of jurisdiction by a State court for enforcement of pre-existing lien rights, or of concurrent jurisdiction held by the court first assuming it.)

On review, District Judge Harris on Nov. 16, 1966, merely denied the petition (Record, p. 58) failing and refusing to make the independent determination of questions of law required by General Order 47 (text, p. 10). On motion to alter and amend, his second decision without

opinion offered no clarification (Record, p. 69).

On appeal, the United States Court of Appeals for the Ninth Circuit on August 5, 1968, affirmed the District Court ruling in a 5-line opinion, resting its decision on the holdings in the holdings in the two prior appeals, and for the third time refusing to decide the question of title. A petition for rehearing was denied without opinion on Sept. 9, 1968. This petition for a Writ of Certiorari followed.

The death of the Referee, the Honorable Bernard J. Abrott, also occurred on Sept. 9.

VI

BASIS OF FEDERAL JURISDICTION. This case arose in a proceeding under Chapter XI of the Bankruptcy Act. Jurisdiction of the United States District Court was based on Sections 2, 311, and 312 of that Act (respectively 11 United States Code, Sections 11, 711, and 712).

VII

REASONS FOR GRANTING THE WRIT. This case is a unique example of malfunctioning of trial and appellate Federal courts, and offers all six of the special and important reasons for granting the writ listed in Rule 19(b).

(1) Interpretation of Sec. 386(2). No decision of this Court has yet dealt with the proper application of Section 386(2), Bankruptcy Act, in setting aside confirmations of arrangements. The Court of Appeals decision in the case at bar constitutes a virtual judicial repeal of the statute, denying its benefits to Petitioner and calling for the exercise of this Court's power of supervision to prevent recurrent injustice. It should be made clear to the court below that the finding of 'fraud in procurement' merely points to remediable technical error in procedure, not to morally turpitudinous substantive fraud, and does not constitute a 'final adjudication' of the merits of the plan of arrangement.

(2) Violation of Abstention Doctrine. Three separate panels of the Court of App- have refused to decide the question of State-Federal conflict of jurisdiction in rem between divorce courts and courts of bankruptcy, or to settle explicitly the question of title to a debtor's estate expropriated by a divorce court for his wife's benefit at the expense of creditors. In so doing, that court has permitted the District Court to abstain from the exercise of its paramount and exclusive power in circumstances not justifying application of the abstention doctrine formulated by this

Court. In view of the rising incidence of bankruptcy and, especially in California, of divorce, such a bad precedent should not be allowed to stand.

(3) Conflict Between Circuits. The same question of jurisdiction in rem, involving conflicting rights of wife and creditors to a husband's property, has arisen in the Tenth Circuit and has been decided properly there, in accord with long-established precedents, under Federal and Oklahoma law,

Panton v. Lee (1958) 261 Fed. 2nd 183 (CA, 10)

Although that divorce action was filed first, the wife had no lien, and her divorce judgment was held invalid against Federal court seizure of property.

" . . the question arises as to whether . . . the decree had the effect in the circumstances of establishing a right in the wife to one-half of the bankrupt estate unencumbered by creditors' claims. . The trustee took the property of the (debtor) subject to liens then existing and valid under the Bankruptcy Act and the laws of the state where the property was situated. Under Oklahoma law the wife had no lien. Hence, her claim cannot prevail over the rights of the trustee. . . The referee further held that the property division contained in the divorce

decree had the purpose of defeating and defrauding the creditors of the husband and amounted to a legal fraud . . ."

Uniformity of decisions among circuits requires that the Tenth Circuit decision be followed here, not evaded by ignoring established law and the findings of the trier of fact, the Referee. Federal rights of a husband should not vary from state to state, circuit to circuit!

(4) Conflict Within the Ninth Circuit. Although not made by the court in banc, as its rules require, the holding in the case at bar is a reversal of prior decisions of the court which uniformly deny a debtor's estate to his wife in fraud of creditors of the marital community:

Hannah v. Swift (1932) 61 Fed. 2nd 307 (CA, 9th)
Gibbons v. Goldsmith (1915) 222 Fed. 826(CA, 9)
Gibbons v. Lexter Horton Bank
(1915) 225 Fed. 424 (CA, 9th)
Britt v. Damson (1964) 334 Fed. 2nd 896 (CA, 9)

Stare decisis doctrine demands that these be followed, as they are sound and interpret California law properly.

(5) Interpretation of California Law. The Court of Appeals decision also violates the principle that lower Federal courts must

accept a State Supreme Court's interpretation of State law. The California Supreme Court has ruled repeatedly that a divorce judgment does not vest title in a wife ahead of creditors, and that the community property divided must be net assets after allowance for debts.

"This divorce action is not an in rem action to quiet title against the world; it is a disposition of property as between the spouses incident to the dissolution of the marital relation."

-- McClenny v. Sup. Ct. (1954) 916
62 Cal. 2nd 140 at 147, 396 P. 2nd

After the Interlocutory Judgment of Divorce, the wife's interest remained

". . . an inchoate one and not such as to form the basis for an action to quiet title."

-- Chance v. Kobsted (1924)
66 Cal. App. 434, 226 Pac. 2nd 632

Thus, the Court of Appeals cannot properly lend implicit support to the Referee's belief that the divorce judgment barred confirmation by vesting title in Respondent. The explicit basis for its decision (that her consent is necessary for confirmation under Sec. 172(a), Civil Code) is absurd on its face as a subordination of Federal law to State law. Its contention that a Debtor in Possession, signing a Deed of Trust in his capacity as a

trustee for the bankruptcy court, is obligated to secure his wife's consent, is also erroneous as a misapplication of California law.

Cutting v. Bryan (1929) 206 Cal. 254, 274 P. 326

Grolemund v. Cafferata (1941) 17 Cal. 2nd 679, 111 Pac. 2nd 641

Union Mutual Life Ins. Co. v. Broderick (1925) 196 Cal. 497, 238 Pac. 1034

"Conditions precedent to enjoyment of the benefits of the Bankruptcy Act . . cannot be provided except by Congress."
-- Case v. L.A. Lbr. Co., (1939) 308 U.S. 106

Finally, and in line with holdings of this Court, an Arrangement is not a simple transaction, but is the telescoped equivalent of suit, seizure, judgment, execution sale, and reconveyance under encumbrance of the real property,

Myers v. Matley (1943) 318 U.S. 623 at 627

and therefore Sec. 172(a) cannot apply. By granting the writ, this Court will dispel the notion that Sec. 172(a) is a bar to confirmation and thus allows a California wife to negate the rights of creditors in a Federal court.

(6) Supervision of the District Court. There is need for this court to emphasize once more that the Bankruptcy Act contemplates that a debtor shall emerge with his

creditors' claims satisfied,

Straton v. New (1931) 283 U.S. 318 at 320

Taylor v. Sternberg (1934) 293 U.S. 470

and, in Chapter XI, with all his property in his possession, having arrived at an Arrangement after determination of his rights by the bankruptcy court,

Wragg v. Fed. Land Bank (1943) 317 U.S. 325

and that the Federal courts may not, by unwarranted abstention from exercise of jurisdiction, allow predatory State courts to strip debtors of their assets and deny creditors all security,

Kalb v. Feuerstein (1940) 308 U.S. 433

In cases involving a conflict of divorce and bankruptcy, wives should not be favored as super-creditors, taking the assets while the husbands are saddled with the debts and the creditors go empty handed with no security. The District Court's right and duty to take and conserve property composing a debtor's estate should be emphasized by granting the writ.

Dismissal of the proceeding on the Referee's own (void) motion on the pretext that an Arrangement cannot be reached, in order to avoid out of comity the declaration that a State court judgment is void constitutes intolerable dereliction of duty that this Court should end.

District judges, in the Northern California district at least, on petitions for review under General Order 47, should make an independ- determination of questions of law.

Newcomb Interests, In re (1959)
171 Fed. Supp. 704 (DC, Cal.)

Three perfunctory, superficial, and erroneous decisions by three district judges in this case indicate that this practice is not followed, and obviously must result in needless appeals that should be eliminated.

(7) Supervision of Court of Appeals.

The handling of this case by the Court of Appeals has been incredibly ineffective in its results and amateurish in its workmanship. The court has not respected the prerogative of the Referee as trier of fact, but has made its own finding that Petitioner is guilty of a fraud of unstated nature permanently barring confirmation. The Referee mistakenly (and on the first appeal only) found 'fraud in procurement' -- which is no more fraud than a turkey buzzard is a turkey -- and raised a question of property title which the appellate court refuses to settle. Neither law-of-the case nor res judicata principles can justify basing the decision in the third appeal on those in the first two, while totally ignoring stare decisis doctrine as

requiring acceptance of decisions of this Court, the Supreme Court of California, and the Tenth Circuit appellate court. The supervision of this Court is badly needed to rectify the failure of the Federal courts in San Francisco to resist unlawful encroachment upon their jurisdiction by the scandal-ridden California divorce courts.

(8) **Public Image of the Judiciary.** Six years of fruitless requests to 3 District Judges and 3 panels of the Court of Appeals for a valid decision on a simple question of law for the guidance of a referee raise serious doubts concerning the willingness of the judges to administer justice according to law, and suggest that sinister extraneous influences frustrated decisions on the merits. The 3 district judges' decisions were not elucidated by written opinions of even minimal length; the 3 appellate rulings fail to exhibit any logical basis, despite opinions of some length in the first two instances. Such glaring denials of justice to Petitioner can only result in harm to the public image of these courts, with concomitant loss of public respect for the judicial process. No equitable considerations exist to excuse such gross disregard for law and precedent; the effect on the parties and their children of the courts' intransigence has been

wholly bad (Record, p. 63-64).

Neither Petitioner's political activity in Alameda County nor his involuntary appearance pro se can justify a series of adverse decisions totally unfounded in fact and law. The assignment of Judge Hamlin --the only former Alameda County Superior Court judge on the Ninth Circuit appellate bench -- to write the opinion on the first appeal was improper.

WHEREFORE, your petitioner prays that there be issued out and under the seal of this Court a SUMMARY PER CURIAM VACATING AND REMAND of this clearly erroneous decision; or, in the alternative, a writ of certiorari directed to the United States Court of Appeals for the Ninth Circuit, to the end that the judgment of said court may be reviewed and reversed by this Honorable Court, and such further relief given as to this Court may seem proper in the circumstances.

Dated: Oct. 1, 1968.

Respectfully submitted,

J. Howard Arnold

Petitioner

Counsel of Record:

Clarence DeLancey
716 Central Building,
Oakland, Calif. 94612
Attorney for Respondent

J. Howard Arnold
Postoffice Box 919
Berkeley, Calif. 94701
for Petitioner

APPENDIX

A. Referee's order filed Sept. 12, 1966

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT for the NORTHERN DIVISION of California

In the matter of	No. 68024
J. HOWARD ARNOLD	In proceedings under
Debtor	Chapter XI of the Bankruptcy Act

ORDER DISMISSING PROCEEDINGS

On June 19, 1962, J. HOWARD ARNOLD filed a petition under the provisions of Chapter XII of the Bankruptcy Act. On September 25, 1962, a petition to transfer having been filed, the proceedings were transferred to Chapter XI of the Bankruptcy Act. On October 30, 1962, the undersigned made an order confirming the amended plan of arrangement. That on January 24 1963, Frances K. Arnold filed a petition to set aside the confirmation of the amended plan of arrangement. On February 28, 1963, the undersigned made an order setting aside the confirmation of the plan of arrangement. The debtor filed a petition for review and the United States District Court affirmed the undersigned's order. The debtor

appealed to the Court of Appeals of the Ninth Circuit and the Court of Appeals affirmed.

The debtor filed another amended plan of arrangement on June 29, 1964. On November 10, 1964, the undersigned made an order denying confirmation of the amended plan of arrangement: The debtor filed a petition for review and the United States District Court affirmed the undersigned's order. An appeal was taken to the United States Court of Appeals and the order of the United States District Court was affirmed.

On March 9, 1966, the undersigned issued an order to Show Cause as to why the debtor proceedings should not be dismissed. The matter was set for hearing for March 29, 1966 and regularly continued to July 26, 1966, when the matter was submitted.

On July 12, 1966, the above-entitled debtor filed a Petition in Support of Motion to Remove Cloud on Title. The matter was regularly set for July 26, 1966. On July 20, 1966, Frances K. Arnold filed her answer to Petition in Support of Motion to Remove Cloud on Title.

Both matters were submitted on July 26, 1966 without further testimony.

The Court Finds:

1. That the matter with reference to

Petition to Remove Cloud on Title has previously been decided.

2. That the only asset in the debtor's plan of arrangement is a piece of real property located at 1058 Pomona Avenue, Albany, California.

3. That the Superior Court, County of Alameda, State of California, awarded the real property located at 1058 Pomona Avenue, Albany, California, to the debtor's former wife, Frances K. Arnold.

The Court concludes that the title to the real property has previously been decided.

IT IS THEREFORE ORDERED that the above-entitled debtor proceedings be and the same are hereby dismissed.

Dated at Oakland, in said District, this 12th day of September, 1966.

BERNARD J. ABROTT
Referee in Bankruptcy

B. District Judge's order filed Nov. 16.

Bankrupt's petition for review of the Referee's order dismissing the proceedings having been regularly presented for hearing and the Court being fully advised,

IT IS HEREBY ORDERED that said petition must be and is hereby DENIED.

Dated: Nov. 16, 1966. GEORGE B. HARRIS
U.S. District Judge

C. District Judge's order filed Feb. 9.

Petitioner's motion to alter and amend the judgment of this court entered on November 16, 1966, having been duly presented for hearing and the court being fully advised,

IT IS ORDERED that said motion be and is hereby DENIED.

Dated: February 9, 1967.

GEORGE B. HARRIS

United States District Judge

D. U.S. Court of Appeals opinion filed Aug. 5.

We have examined appellant's assignments of error and find no merit in them. Twice before, this court has affirmed the district court's denial of the appellant's petitions to review the Order of the Referee in Bankruptcy. See Arnold v. Arnold, 9 Cir., 1964, 326 F. 2nd 960, and Arnold v. Arnold, 9 Cir., 1966, 356 F. 2nd 873.

We affirm.